XFHC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A. 314 सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

[illegible] का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश			कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

MISC. APPEAL NO.314/2006

APPELLANT			Suresh Kumar Patel, aged about 35 years, son of Shri Balram Patel, Occupation-Vehicle Owner, resident of Village Teemarlaga, Police Station and Tahsil Sarangarh, District-Raigarh(Chhattisgarh)
RESPONDENTS	1.		Ajit Ram Banjare, aged about 42 years, son of Shri Turum Banjare
	2.		Chamarin Bai alias Urmila, aged about 40 years, wife of Shri Ajit Ram
	3.		Chameli Bai, aged about 22 years, daughter of Shri Ajit Ram Banjare
	4.		(Minor) Chandrakala, aged about 15 years, daughter of Shri Ajit Ram
	5.		(Minor) Raju Banjare, aged about 11 years, son of Shri Ajit Ram Banjare (Minors i.e. respondents No. 4 & 5 through- their natural guardian i.e. Father Ajit Ram Banjare, aged about 42 years, son of Shri Turum Banjare(respondent No.1) All are residents of village Kanshideeh, Police Station Chandrapur, Tahsil Dabhra, District Janjgir Champa(CG)
	6.		Girdhaar Chauhan, son of Shri

(57)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A. 314 सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
		Sonsai Chauhan, resident of village Hardi, Post Marwa, PS Chandrapur Tahsil Dabhra, District Janjgir Champa(CG)
	7.	United India Insurance Co. Limited through- Branch Manager, In front of Gopi Talkies, Raigarh, District-Raigarh(CG)

Misc. Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance:

Shri Roop Naik, counsel for the appellant.

Shri Ratan Pusty, counsel for respondents No. 1 to 5.

Shri H.B.Agrawal, Sr. Advocate with Ms. Sangita Mishra, counsel for respondent No.7.

D.B-: HON'BLE SHRI L.C. BHADOO, J, &
HON'BLE SHRI SUNIL KUMAR SINHA,J.

ORAL JUDGMENT
(01.08.2007)

L.C.Bhadoo, J.

Heard.

The appellant Suresh Kumar Patel, owner of tractor bearing registration No. CG 13-A 2046, has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988, being aggrieved by award dated 14.2.2005, passed by the Second Motor Accidents Claims Tribunal, Raigarh in Motor Accident Claim Case

(58)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A. 314 सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

[redacted]ा का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

No.111/2003, whereby, the learned Tribunal has assessed the liability to the tune of Rs.1,52,000/- against the appellant herein and has exonerated respondent No.7- United India Insurance Company Limited from payment of liability of the compensation amount on the ground that the tractor and trolly was being used in breach of policy i.e. the tractor was being used for commercial purpose other than the agricultural purpose for transporting *Murram.*

The brief facts giving rise to file this appeal are that on 4.8.2003, the appellant herein was the owner of tractor bearing registration No. CG 13 A-2046 and Trolly No. CG 13 A-2047, Girdhaar Chauhan- respondent No.6 herein, was driving the tractor and said tractor was insured with respondent No.7 herein- United India Insurance Company Limited. On that day when the tractor was being driven by Girdhaar Chauhan, Set Kumar was working as a labour and he was in the tractor. Girdhhaar Chauhan was driving the tractor in a rash and negligent manner, as a result of which, Set Kumar fell down from the trolly. He was crushed under tyre of the trolly and died spontaneously, therefore, respondents No. 1 to 5 herein, filed a claim before the Tribunal and learned Tribunal passed the award against the appellant herein as aforementioned.

Learned counsel for the appellant argued that the Insurance Company has not been able to establish that on the fateful day, the tractor and trolly was being used for commercial purpose i.e. for carrying bolder and Murram, therefore, the finding of the

(59)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A. 314 सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Tribunal that the tractor and trolly was being used for commercial purpose, is not based on record.

It is an admitted position that the tractor and trolly was insured for agricultural purpose and not for commercial purpose. After evaluating the evidence, learned Tribunal in para 17 of the award arrived at a conclusion that at the time of accident, the tractor and trolly was being used for carrying *Murram* and bolder.

We have perused the record.

The claimants in para 10 of the claims petition mentioned that on 4.8.2003, Set Kumar was working on the tractor as a labour and he had gone in morning to work as a labour. When the tractor met with an accident, Set Kumar fell down from the tractor and died on the spot. The tractor was being used for the purpose of carrying *Murram*. Even though the appellant herein, in reply has denied that the tractor was being used for commercial purpose i.e for carrying *Murram*.

A perusal of the order would show that witness No.2-Indrajeet has been examined on behalf of the owner. In examination-in-chief, he has stated that on 4.8.2003 Suresh Kumar had took the tractor and trolly for carrying fertilizers. In cross-examination, he stated that Suresh Kumar is not a resident of their village; he is resident of village –Teemarlaga, which is situated in Raigarh district. Damodar Patel is the resident of his village. He has denied that the tractor in question was in possession of Damodar. The tractor was being driven by Girdhaar Chauhan. The accident took place on account of rash

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A. 314 सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

and negligent driving by Set Kumar. He has denied that the tractor was being used for carrying bolder and *Murram*.

In para 7, he has stated that during investigation, Police has not recorded his statement and the statement Ex.N-A/5 dated 4.8.2003 was not given by him to the Police.

A perusal of the statement Ex.N-A/5 would show that this very witness gave evidence to the Investigating Officer that the tractor was being driven by Girdhaar Chauhan and was used for carrying bolder and *Murram*. PW-1 – Suresh Kumar Patel has admitted that on 4.8.2003, his tractor met with an accident near the Medical College. He has also admitted that the tractor in question was being driven by Girdhaar Chauhan. He in cross-examination has stated that at the time of accident, he was not on the tractor. In the first instance, he is the resident of village Teemarlaga, whereas, the accident had occurred in village-Kanshideeh, of which, Damodar is the resident, therefore, as per the case of claimants, Damodar took the tractor for his use. Even N-A-W/1 –Santosh Kumar Tiwari, Investigating Officer of the Insurance Company, who had conducted the investigation, has also stated that the tractor in question was being used for carrying bolder and *Murram*.

A perusal of the above document reveals that the finding arrived by the Tribunal that the tractor was being used for carrying bolder and *Murram* i.e. for commercial purpose, is based on record and there is no perversity in finding and the conclusion arrived at by the Tribunal. There was a breach of policy, as such

XI-HC—78

(61)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A. 314 सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	the owner of the tractor and trolly has rightly been held responsible for the compensation, it requires no interference by this Court. The appeal has no merit and the same is accordingly dismissed. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Sunil Kumar Sinha** **Judge**

sunita